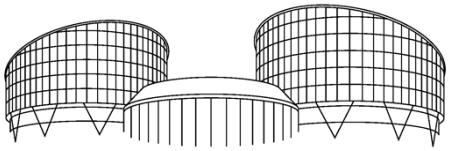

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MAKSHAKOV v. RUSSIA

(Application no. 52526/07)

JUDGMENT

STRASBOURG

24 May 2016

FINAL

24/08/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Makshakov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 3 May 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 52526/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Vladimirovich Makshakov ("the applicant"), on 30 October 2007.

2. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of the appalling conditions of his detention and of the lack of adequate medical care. He also alleged that he had no effective remedies regarding the alleged violations.

4. On 6 March 2013 the aforementioned complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and until his arrest lived in Sarapul, the Republic of Udmurtiya.

6. He was arrested on 18 October 2006. On 28 May 2007 the Sarapul Town Court convicted him of several criminal offences, including

aggravated robbery committed by a criminal group, and sentenced him to six years and ten months' imprisonment.

A. Conditions of detention

7. After the arrest on 18 October 2006 the applicant was taken to a police station in Sarapul and shortly thereafter to remand prison no. IZ-18/1 in Izhevsk. Twenty days later he was admitted to prison hospital no. 4 ("the prison hospital").

8. The parties provided conflicting descriptions of the conditions of the applicant's detention in the prison hospital between March and October 2007.

1. Description submitted by the applicant

9. From March to May 2007 he was detained with nine other sick inmates in cell no. 4, which measured 36 sq. m. Accordingly, each detainee was afforded around 3.6 sq. m of personal space. The living space was further diminished by six bunk beds and a table. The cell had a window measuring 150 by 150 cm and two lamps, only one of which was functional. Inmates were allowed to smoke in the cell. The ventilation system, which was switched on in the mornings and evenings, and a small ventilation window measuring 25 by 30 cm, was unable to ensure sufficient inflow of fresh air. The cell had a squat toilet separated by a metal screen from the sink, but not from the table or the door.

10. In May 2007 the applicant was transferred to cell no. 1 which was not different in any aspect from cell no. 4, save for the facts that the cell had two windows and was located in the semi-basement and was therefore excessively humid.

11. In late June 2007 the applicant was placed in cell no. 20. The conditions of detention there were satisfactory. It was designed for ten detainees but only accommodated five.

12. Shortly after the applicant was returned to cell no. 4. He did not describe his further transfers between the cells, only claiming that the conditions of his detention had been deplorable.

13. As to the general conditions of detention, the applicant argued that daily outdoor exercises were dispiriting, as the prison yard, secured by high walls, was gloomy and small, and the outdoor activities did not last longer than an hour, or were sometimes even shorter.

14. The applicant used communal shower facilities which were in an appalling unsanitary condition. The floor was covered by a mixture of mud and detergent. Each detainee was afforded fifteen minutes to take a shower.

15. The quality of food served in the prison hospital was poor and scarce. Dishes largely comprised of cabbage, potatoes and barley grit. Meat or fish was only served on public holidays.

16. The applicant supported his claims with photos of the prison hospital and a dish served there.

2. Description submitted by the Government

17. Relying on certificates issued by the prison hospital administration on 22, 23 and 24 April 2013, extracts from records of inmates' transfers on 7 and 28 February, 27 March, 5 and 23 April, 7 August, 7 and 11 September, 1 October 2007, and a detailed plan of the prison hospital, the Government claimed that the facility had not been overcrowded. Their submissions may be summarised as follows:

Period of detention	Cell no.	Cell surface area (sq. m)	Number of detainees
28 February to 21 March 2007	4	37	7
21 to 27 March 2007	6	22.5	5
27 to 31 March 2007	4	37	7
31 March to 5 April 007	Punishment cell no. 1	6.1	1
5 to 23 April 2007	4	37	7
23 April to 7 August	1	30.4	7
7 August to 7 September 2007	20	36.8	7
7 to 11 September 2007	4	37	8
11 September to 1 October 2007	14	39.4	9
1 to 9 October 2007	Punishment cell no. 2	6.7	1

18. Relying on photos of the prison hospital, written statements about the conditions of detention in 2007 made by three inmates in 2013, and on certificates issued by the prison hospital administration on 22 and 24 April 2013, the Government argued that the cell windows had allowed sufficient daylight so that inmates had been able to read and write. The cells had been equipped with four 40-watt fluorescent tubes which had been lit from 6 a.m. to 10 p.m. At night the cells had been lit by security lights.

19. A ventilation system had been installed in every cell. The natural ventilation had also been ensured through the windows. The heating system had properly functioned.

20. Toilets in the cells had been separated from the main area by a partition for privacy. Due to the security considerations involved, punishment cells designed for solitary confinement had no such partition, but were equipped with a curtain. The applicant had been able take a shower once a week for at least fifteen minutes.

21. The premises of the prison hospital had been in good sanitary condition, as it had been checked daily by staff members. The cells had been cleaned and disinfected every day.

22. In addition to a daily hour-long walk in the prison hospital's yard, the applicant had been able to walk freely during the daytime within sanitary block.

23. The applicant had been provided with three hot meals per day and an extra allowance for ill inmates comprising bread, vegetables, meat, milk, cheese and fruit juice.

B. Medical treatment

24. Despite the Court's request to produce the applicant's complete medical record, the Government only submitted several illegible pages apparently belonging to his medical file. They further produced extracts from his medical history. The extracts contained fragments of information concerning the drugs prescribed. The following information on the applicant's treatment may be deduced from the submitted documents.

25. The applicant did not suffer from tuberculosis prior to his arrest.

26. On the day of his arrest, 18 October 2006, the applicant was seen by a prison paramedic, who performed a general check-up, noting, *inter alia*, that the applicant's lungs were clear. The next day a prison doctor confirmed that he was in good health. In late October a periodic chest X-ray showed traces of tuberculosis. The prison doctor studied the X-ray record and recommended the applicant's transfer to the prison hospital.

27. Five days later the applicant was admitted to the prison hospital. A sputum smear test performed on admission led to his being diagnosed with infiltrative tuberculosis at the stage of lung tissue destruction, with inactive *Mycobacterium tuberculosis* ("MBT"). Two days later a new X-ray test confirmed the diagnosis.

28. Between 16 November 2006 and 11 January 2007 the applicant underwent inpatient anti-tuberculosis treatment in the prison hospital. There is no information describing the nature of the treatment. For unknown reasons it was unsuccessful.

29. According to the medical records, in the following year the applicant "received standard anti-tuberculosis treatment". However, he stated that between March 2007 and March 2008 he had only been given basic febrifuges and painkillers. During that period he was seen by the prison doctor on three occasions. No significant changes were registered. The size of the lung cavities remained the same.

30. In the beginning of 2008, when a chest X-ray and tomography examinations registered a new focal point of infiltration in the right lung, the applicant's doctor confirmed the extent of the deterioration of the applicant's health.

31. In early March 2008 the applicant was examined by a commission of doctors and certified as having a second-degree disability. A three-month drug regimen based on pyrazinamide, ethambutol, capreomycin and other

medication was prescribed. According to the applicant, one of the drugs was out of stock.

32. On 18 March and 1 April 2008 the applicant failed to see the attending doctor.

33. In May 2008 the treatment regimen was amended with capreomycin removed and new drugs (rifampicin, cycloserine and others) added into the applicant's daily drug intake.

34. In the following two months the applicant interrupted his treatment for a period of two or three weeks, having refused to take some drugs and having gone on hunger strike. In the late June 2008 his tuberculosis transformed into MBT-positive form.

35. Between July 2008 and March 2009 the applicant received inpatient treatment which had no effect on his medical condition. The deterioration of his health continued in the summer and autumn of 2009.

36. An X-ray and a tomography examination performed in September 2009 indicated that the applicant's lungs were filled with caseation. The applicant was taken for a month-long inpatient treatment in the hospital with his condition had been brought under control. By September 2010 his health had improved and the lung cavities had disappeared.

37. According to his medical records, in December 2010 the applicant refused to take a few of the anti-tuberculosis drugs. In April, September and November 2011 he did not consult the attending doctor.

38. In September 2011 tuberculomas replaced the lung cavities. In 2012-13 calcifications and pulmonary fibrosis scars were only registered in the applicant's lungs. The most recent sputum smear test in February 2013 did not indicate whether the applicant remained MBT-positive.

39. The parties did not submit information on the applicant's further treatment.

C. Complaints regarding medical treatment

40. In the end of 2006 the applicant complained about the poor quality of medical care to the Ministry of Health of the Republic of Udmurtiya. By a letter of 17 January 2007 his claim was rejected.

41. In the early 2007 he lodged a similar claim with the Service for the Execution of Sentences in the Republic of Udmurtiya. It was dismissed on 23 April 2007.

42. In 2008 the applicant unsuccessfully complained to the Federal Ombudsman about his alleged lack of access to information about his health and diagnoses. His claim was not examined on the merits.

43. He further complained of the lack of medical assistance to the prosecutor's office of the Republic of Udmurtiya. On 21 August 2008 his complaint was dismissed.

44. In 2010 the applicant lodged two claims with the Industrialnyy District Court of the Republic of Udmurtiya arguing that he had not benefitted from adequate medical care in detention. The claims were dismissed. According to the Government, the applicant did not appeal. The parties did not submit copies of the judgments.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

45. For a summary of the relevant domestic and international law provisions governing the conditions of detention see the case of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 25-58, 10 January 2012).

B. Medical care afforded to detainees

46. Russian law gives detailed guidelines regarding the provision of medical assistance to detainees. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice on the Organisation of Medical Assistance to Individuals Serving Sentences or Remanded in Custody ("the Regulation"), enacted on 17 October 2005, are applicable without exception to all detainees. In particular, section III of the Regulation sets out the initial steps to be taken by the medical staff of a detention facility upon admission of a detainee. On arrival at a temporary detention facility, all detainees should have a preliminary medical examination before being placed in a shared cell. The aim of the examination is to identify individuals suffering from contagious diseases and those in need of urgent medical assistance. Particular attention should be paid to individuals suffering from contagious diseases. No later than three days after the detainee's arrival at the detention facility, he or she should be given an in-depth medical examination, including an X-ray. During the in-depth examination a prison doctor should record the detainee's complaints, study his medical and personal history, log any injuries and recent tattoos, and schedule additional medical procedures if necessary. A prison doctor should also authorise laboratory analyses to identify sexually-transmitted diseases, HIV, tuberculosis and other illnesses.

47. Subsequently, detainees should be given medical examinations at least twice a year, or to follow up specific complaints. If a detainee's state of health has deteriorated, medical examinations and assistance should be

provided by the detention facility medical staff. In such cases the medical examination should include a general check-up and additional tests, if necessary with the participation of the relevant specialists. The results of the examinations should be recorded in the detainee's medical file. The detainee should be given full information regarding the results of the medical examinations.

48. Section III of the Regulation also sets out the procedure to follow in the event that a detainee refuses to undergo a medical examination or treatment. For each refusal, an entry should be made in the detainee's medical record. A prison doctor should give a full explanation to the detainee of the consequences of his refusal to undergo the medical procedure.

49. Any medication prescribed for the detainee must be taken in the presence of a doctor. In certain, limited situations, the head of the detention facility medical department may authorise his medical staff to hand over a daily dose of drugs to the detainee to be taken unobserved.

C. General guidelines for tuberculosis treatment

50. The following are extracts from the "Treatment of Tuberculosis: Guidelines", fourth edition, World Health Organisation, 2009,

> "2.6 ...Previously treated patients have received 1 month or more of anti-tuberculosis drugs in the past, may have positive or negative bacteriology and may have disease at any anatomical site. They are further classified by the outcome of their most recent course of treatment...
>
> ...
>
> 3.6. Previous tuberculosis ("TB") treatment is a strong determinant of drug resistance, and previously treated patients comprise a significant proportion (13%) of the global TB notifications in 2007.
>
> Of all the forms of drug resistance, it is most critical to detect multidrug resistance ("MDR") because it makes regimens with first-line drugs much less effective and resistance can be further amplified. Prompt identification of MDR and initiation of MDR treatment with second-line drugs gives a better chance of cure and prevents the development and spread of further resistance...
>
> 3.7. Standard regimes for previously treated patients
>
> The *Global Plan to Stop TB 2006–2015* sets a target of all previously treated patients having access to [drug susceptibility testing] at the beginning of treatment by 2015. The purpose is to identify MDR as early as possible so that appropriate treatment can be given...
>
> Recommendation 7.1
>
> Specimens for culture and drug susceptibility testing (DST) should be obtained from all previously treated TB patients at or before the start of treatment. DST should be performed for at least isoniazid and rifampicin...
>
> Recommendation 7.2

In settings where rapid molecular-based DST is available, the results should guide the choice of regimen."

D. Provisions establishing legal avenues for complaints about the quality of medical assistance

51. The provisions of domestic law establishing the legal avenues for complaints about the quality of medical services are cited in the following judgments: *Patranin v. Russia* (no. 12983/14, §§ 86-88, 23 July 2015); *Reshetnyak v. Russia* (no. 56027/10, §§ 35-46, 8 January 2013); *Dirdizov v. Russia* (no. 41461/10, §§ 47-61, 27 November 2012); and *Koryak v. Russia*, (no. 24677/10, §§ 46-57, 13 November 2012).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

52. The applicant complained that the conditions of his detention in the prison hospital had been inhuman and degrading and that he had not had an effective domestic remedy for his grievances. He referred to Articles 3 and 13 of the Convention, which read:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions by the parties

53. The Government argued that the applicant had been detained in conditions that fully satisfied domestic standards. The prison hospital had been neither overcrowded, nor unsanitary. They relied on certificates issued by the administration of the prison hospital, on inmates' statements, photos and other documents (see paragraphs 17 and 18 above).

54. The applicant disputed the Government's description of the conditions of his detention, claiming that it was not based on creditable evidence such as the registration logs. In any event, even if that description was accurate, he had been afforded less than the 7 sq. m of personal space

recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

55. Invoking the case of *Ananyev and Others* (cited above) he argued that no effective remedy for complaints concerning conditions of detention existed in the Russian legal system.

B. The Court's assessment

1. *Admissibility*

56. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) Compliance with Article 3 of the Convention

(i) General principles

57. The Court reiterates at the outset that in order to fall within the scope of Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999).

58. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person was detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

59. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). An applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific factors, such as the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds (see *Sakhvadze v. Russia*, no. 15492/09, § 87, 10 January 2012).

(ii) Application of the above principles to the present case

60. Turning to the circumstances of the present case, the Court reiterates that the focal point for its assessment of the detention conditions is the living space afforded in detention (see *Mela v. Russia*, no. 34044/08, § 61, 23 October 2014; *Klyukin v. Russia*, no. 54996/07, § 55, 17 October 2013; and *Geld v. Russia*, no. 1900/04, § 24, 27 March 2012). The applicant claimed that he had been detained in cramped conditions, mainly in cell no. 4 where each detainee had been afforded around 3.6 sq. m of personal space (see paragraph 9 above). The Government disputed the applicant's submissions, stating that he had always been afforded more than 4 sq. m of personal space. They supported their submissions with certificates issued by the detention authorities, extracts from the inmates' transfer logs, photos and inmates' written statements (see paragraphs 17 and 18 above).

61. Having assessed the evidence presented by the parties, the Court accepts the primary documents produced by the Government and rejects the applicant's allegation of overcrowding during the period of his detention. It finds that there was no shortage of sleeping space in the cells and that the applicant disposed of at least 4 sq. m of personal space. It cannot be said that the overall dimensions of his cells were so small as to restrict the inmates' freedom of movement beyond the threshold tolerated by Article 3 of the Convention (see *Sergey Chebotarev v. Russia*, no. 61510/09, § 42, 7 May 2014, and *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 134, 17 January 2012).

62. In the light of the parties' submissions and the legal regulations regarding the regime in Russian detention facilities, as applicable at the material time (see paragraph 45 above), the Court also considers the following to be established. Windows in the cells, which, as both parties agreed, had not been covered by metal shutters or any other contraptions, allowed sufficient natural light to penetrate into the cell. Where available, a window casing could have been opened for flow of fresh air. Cells were additionally equipped with properly functioning artificial lighting and ventilation.

63. As regards the sanitary and hygiene conditions, it is noted that the dining table was located inside the cells. A high partition separated the toilet pan on one side; a door had been installed on another side forming a cubicle and thus completely shielding an inmate inside it from view. Cold running water was available in cells and detainees had access to showers once every seven days. In punishment cells, were the applicant was kept alone, the sanitary facilities were separated by curtains.

64. The Court also finds it established that the applicant had been allowed a daily hour-long exercise period in the recreation yard. He could also move between rooms in the medical block while undergoing inpatient treatment.

65. The Court acknowledges that the conditions of detention of the applicant fell short of the Minimum Standard Rules for the Treatment of Prisoners, the European Prison Rules and the recommendations of the Committee for the Prevention of Torture in some aspects. Nevertheless, taking into account the cumulative effect of those conditions, the Court does not consider that the conditions of the applicant's detention reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (see, for similar reasoning, *Fetisov and Others*, cited above, §§ 137-38, and *Sergey Chebotarev,* cited above, §§ 38-46).

66. The Court therefore concludes that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the prison hospital.

(b) Compliance with Article 13 of the Convention

(i) General principles

67. The Court reiterates that an applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006‑II, and *Ananyev and Others*, cited above, § 94, with further references).

68. Where the fundamental right to protection against torture and inhuman or degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the special importance attached by the Convention to that provision requires, in the Court's view, that the Contracting Parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Had it been otherwise, the prospect of future compensation would have legitimised particularly severe suffering in breach of this core provision of the Convention (see *Ananyev and Others*, cited above, § 98, and *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008).

69. In the context of preventive remedies, the domestic authority or court dealing with the case must be able to grant relief which may,

depending on the nature of the underlying problem, consist either in measures that affect only the complainant or – for instance where overcrowding is concerned – in wider measures that are capable of resolving situations of massive and concurrent violations of prisoners' rights resulting from inadequate conditions in a given correctional facility (see *Ananyev and Others*, cited above, § 219, and *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, § 188, 27 January 2015). In the context of compensatory remedies, monetary compensation should be accessible to any current or former inmate who has been held in inhuman or degrading conditions and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 of the Convention will give rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person, and the level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases (see *Ananyev and Others*, cited above, §§ 228-30). Lastly, prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so (see *Neshkov and Others*, cited above, § 191).

(ii) Application of the above principles to the present case

70. In the light of its conclusion on the admissibility of the applicant's complaint under Article 3 of the Convention (see paragraph 56 above), the Court finds that it was "arguable". In *Ananyev and Others* (cited above, § 119), it has already found that the Russian legal system did not provide an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. The Government have presented no arguments or evidence to enable the Court to reach a different conclusion in the case at hand. The Court therefore concludes that the applicant had no effective domestic remedy at his disposal in respect of his complaint concerning the conditions of his detention in the prison hospital.

71. There has accordingly been a violation of Article 13 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE QUALITY OF MEDICAL TREATMENT

72. The applicant complained that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance in breach of Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

73. The applicant lastly claimed that he had not had at his disposal an effective remedy for complaining of these violations of the guarantee against ill-treatment, as required under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

A. Submissions by the parties

74. The Government put forward two lines of argument.

75. Firstly, they argued that the applicant's claim should be rejected owing to non-exhaustion of domestic remedies. They stated that the applicant should have raised his complaint before the Russian authorities, in particular, before the detention facilities' administration and a court. However, he had failed to do so. The Government stressed that although the applicant had applied to a court, he had not appealed against the first-instance judgments.

76. Secondly, they argued that the applicant had been afforded adequate medical treatment. He had been subjected to regular medical examinations and his health had been duly monitored by medical specialists. The applicant had been admitted to hospital for inpatient treatment when necessary. The length of his treatment and the failure to cure the applicant had resulted from his uncooperative behaviour. He had often refused to take medication, and had failed to see the attending doctors or refused to undergo medical examinations.

77. The applicant argued that he had contracted tuberculosis in detention and that he had not received regular and systematic treatment. He was rarely seen by a doctor. The medicines prescribed had been often out of stock. He had therefore been unable to receive the complete course of his drug therapy. He had occasionally and for minor periods refused to take medication to draw the attention of the authorities to the poor quality of his treatment. Those minor interruptions had not undermined the efficiency of the therapy which, in the absence of a drug susceptibility test, had had no prospects of success.

78. The applicant noted the Government's claim related to his failure to exhaust domestic remedies. He stressed that his numerous complaints to the authorities, including oral complaints to the detention authorities, had been fruitless and that he had therefore had no effective remedy by means of which to complain about the quality of his treatment. He had had no opportunity to appeal against the court judgments in his cases as he had not received copies of them.

B. The Court's assessment

1. Admissibility

79. The Court notes that the Government raised an objection in respect of the non-exhaustion of domestic remedies by the applicant. This issue is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for his complaints concerning the absence of effective medical care. It is therefore necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention.

80. The Court further notes that the complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and compliance with Article 13 of the Convention

(i) General principles

81. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to first use the remedies provided by the national legal system. Consequently, States are exempted from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to provide appropriate relief. Moreover, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

82. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the alleged breaches. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available both in theory and in practice

at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances exempting him or her from the requirement.

83. The Court emphasises that the application of this rule must make due allowance for the fact that it is being applied in the context of the machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically: in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means that, amongst other things, account must be taken – realistically – not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

84. The scope of the Contracting States' obligations under Article 13 of the Convention varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 of the Convention must be "effective" in practice as well as in law, in the sense of either preventing the alleged violation or its continuation, or providing adequate redress for any violation that has already occurred (see *Kudła*, cited above, §§ 157-58, and *Wasserman v. Russia (no. 2)*, no. 21071/05, § 45, 10 April 2008).

85. Where the fundamental right to protection against torture and inhuman and degrading treatment is concerned, the preventive and compensatory remedies must be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the particular importance attached by the Convention to that provision requires, in the Court's view, that the Contracting Parties establish, over and above a compensatory remedy, an effective mechanism in order to put a rapid end to any such treatment. Were it otherwise, the prospect of future compensation would legitimise

particularly severe suffering in breach of this core provision of the Convention (see *Vladimir Romanov*, cited above, § 78).

(ii) Application of the above principles to the present case

86. Turning to the facts of the present case, the Court notes the Government's argument that the applicant had failed to exhaust domestic remedies. The Court is not convinced by this submission. The documents produced by the applicant, such as the copies of letters from various domestic authorities, show that he complained to the Ministry of Health of the Republic of Udmurtiya, the Service for the Execution of Sentences in the Republic of Udmurtiya, the Ombudsman and the prosecutor's office of the Republic (see paragraphs 40-44 above), as well as lodged two claims before the Russian court. The applicant therefore attempted to draw the authorities' attention to his state of health and the inappropriate, in his view, quality of the medical care he had been afforded in detention. This fact alone has on many occasions been sufficient for the Court to dismiss the Government's objection of non-exhaustion (see, for instance, *Gurenko v. Russia*, no. 41828/10, § 78, 5 February 2013).

87. The Court further observes that it has on many occasions examined the effectiveness of the domestic remedies suggested by the Government, namely lodging a complaint with the authorities of a detention facility, prosecutor's office or a court (see, among many other authorities, *Patranin*, cited above, § 86; *Gorbulya v. Russia*, no. 31535/09, §§ 56-58, 6 March 2014; and *Reshetnyak,* cited above, §§ 65-73). In the aforementioned cases the Court has established that none of the legal avenues put forward by the Government constituted an effective remedy that could have been used to prevent the alleged violations or their continuation, or to provide the applicant with adequate and sufficient redress for his or her complaints under Article 3 of the Convention. Accordingly, the Government's objections of non-exhaustion of domestic remedies were dismissed.

88. In view of the applicant's grave health problems and the seriousness of his allegations about the way they were addressed by the authorities, the Court considers that he had an "arguable claim" of inadequate medical care in detention and that the authorities, accordingly, had an obligation to ensure the availability of an effective remedy to deal with the substance of his complaint. Taking into account the circumstances of the present case and the aforementioned case-law, the Court sees no reason to depart from its previous findings on the issue. It concludes that the legal avenues put forward by the Government did not constitute an effective remedy that could have been used to prevent the alleged violations or their continuation and provide the applicant with adequate and sufficient redress for his complaints under Article 3 of the Convention.

89. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and finds a violation of Article 13 of the Convention.

(b) Compliance with Article 3 of the Convention

(i) General principles

90. The Court reiterates that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most cases concerning the detention of sick people, the Court has examined whether or not the applicant received adequate medical care in prison. The Court reiterates in this regard that even though Article 3 of the Convention does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to assure the health and well-being of detainees as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts); and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

91. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists, in particular, that authorities must ensure that diagnosis and care are prompt and accurate (see *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006; and, *mutatis mutandis, Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006) and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114, and *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005). The Court reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same level of medical treatment that is available in the best healthcare establishments outside prison facilities (see *Blokhin v. Russia* [GC],

no. 47152/06, § 137, 23 March 2016, and *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

92. On the whole, the Court reserves a fair degree of flexibility in defining the required standard of healthcare, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

(ii) Application of the above principles to the present case

93. Turning to the circumstances of the present case, the Court notes the applicant's submission that he was infected with tuberculosis in detention. In connection with this it reiterates that even if it was indeed so, this in itself would not imply a violation of Article 3 of the Convention, provided that he received treatment for it (see *Yevgeniy Bogdanov v. Russia*, no. 22405/04, § 90, 26 February 2015; *Gorbulya*, cited above, § 84; *Asyanov v. Russia*, no. 25462/09, § 31, 9 October 2012; *Vasyukov v. Russia*, no. 2974/05, § 66, 5 April 2011; *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009; and *Alver*, cited above, § 54). The Court is therefore bound to assess the quality of medical treatment rendered to the applicant and to determine whether he was deprived of adequate medical assistance as he claims and, if so, whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban*, cited above, § 78).

94. At the outset the Court notes that the applicant was diagnosed with tuberculosis in 2006. Although at that time his disease was at the initial stage and was not chronic, it took more than seven years to get it under control. For several years the applicant's tuberculosis remained MBT-positive. This is a major sign of the inadequacy of the applicant's treatment (see *Gladkiy*, cited above, § 92). However this element by itself is unable to warrant the conclusion that the applicant's treatment was inadequate since various factors may influence the progress of the disease. The Court will therefore examine the course of the applicant's treatment.

95. With regard to the above, the Court observes that the evidence assessment in cases such as the one at hand calls for expert knowledge in various medical fields. In this connection the Court emphasises that it is sensitive to the subsidiary nature of its role, and recognises that it must be cautious in assuming the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis, Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010, and *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

96. The Court has examined a large number of cases against Russia raising complaints of inadequate medical care afforded to inmates (see, among the most recent ones, *Patranin*, cited above; *Gorelov v. Russia*, no. 49072/11, 9 January 2014; *Budanov v. Russia*, no. 66583/11, 9 January 2014; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Dirdizov*, cited above; and *Reshetnyak*, cited above). In the absence of any effective remedy in Russia to handle those complaints, the Court has been obliged to evaluate the evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been respected. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

97. The Court reiterates that the Government failed to comply with its request to provide medical documents covering the entire period of the applicant's detention (see paragraph 24 above). In the absence of any explanation from the Government, the Court is unable to establish whether their failure is a product of the domestic authorities' inability to keep a comprehensive record concerning the applicant's state of health and the treatment he received (see, for example, *Khudobin*, cited above, § 83) or a result of the Government's omission to enclose with their submissions to the Court a part of the applicant's medical record which may be considered vital evidence as it contains information capable of corroborating or refuting the allegations put forward by the applicant. However, irrespective of the reasons for that failure, the Court is prepared to draw inferences as to the well-foundness of the applicant's allegations and the Government's conduct in the instant case (see *Bekirski v. Bulgaria*, no. 71420/01, § 115, 2 September 2010, with further references, and *Imakayeva v. Russia*, no. 7615/02, § 124, ECHR 2006‑XIII (extracts)).

98. In the absence of accurate information on the applicant's treatment in the period between March 2007 and March 2008, in particular, the absence of medical prescriptions, the Court accepts the applicant's argument that in that initial period of his treatment he received no special anti-tuberculosis therapy (see paragraph 29 above). In this respect the Court observes that the authorities' inability to ensure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients is a key factor in tuberculosis treatment failure (see, for similar reasoning, *Gladkiy*, cited above, § 94, and *Yakovenko v. Ukraine*, no. 15825/06, §§ 98-102, 25 October 2007).

99. The Court is also mindful of another element in the management of the applicant's case, namely the authorities' failure to perform a drug-susceptibility test. The importance and value of this test may be seen from the Guidelines of the World Health Organisation listed in paragraph 50 above. Given the length of the treatment, its occasional interruptions and

lack of clear signs of improvement in the applicant's condition for a significant period of time, there was a crucial necessity to perform the test. It was impossible to choose an appropriate treatment regimen for the applicant without testing him for drug resistance. The Court has already condemned delays in recommending and performing such a test in the initial stages of the diagnostic process (see *Kushnir v. Ukraine*, no. 42184/09, § 146, 11 December 2014; *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 90, 22 November 2011; and *Gladkiy*, cited above, § 93). In over seven years of treating the applicant for tuberculosis the Russian authorities did not make recourse to this important diagnostic procedure which was vital for the setting of a proper course of treatment and drug therapy.

100. Against this background the Court rejects the Government's submissions that the applicant's uncooperative behaviour undermined the efficiency of his therapy. The Court observes that the applicant had interrupted the treatment for the first time in June 2008 (see paragraph 34 above), that is to say more than a year and a half after the initiation of the therapy which had proved to be ineffective and had not, in any respect, ameliorated the applicant's condition. It therefore considers that the applicant's decision to interrupt the treatment was no more than a legitimate attempt to draw the authorities' attention to the poor quality of the medical care. Taking into account that the period of interruption lasted less than a month, the Court is not persuaded that it could have significantly impacted the quality of the applicant's treatment.

101. To sum up, the Court finds that the Government did not provide sufficient evidence to enable it to conclude that the prolonged period of the applicant's suffering from tuberculosis was caused by any other factor than mismanagement of his illness. The failure of the Russian authorities to ensure the proper medical care for the applicant is clearly demonstrated in the absence of any drug therapy at the initial stage of his treatment and incomplete drug therapy at the later stages. The authorities' failure to perform a drug-susceptibility test must have adversely affected the chances of the applicant's therapy of having any real prospect of success. As a result the applicant was exposed to continuous mental and physical suffering diminishing his human dignity. The authorities' failure to provide him with the requisite medical care amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. The Court has also examined other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and

freedoms set out in the Convention or its Protocols. It follows that this part of the application must be also rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

104. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

105. The Government argued that the finding of a violation would in itself be adequate just satisfaction.

106. The Court, making its assessment on an equitable basis, considers it reasonable to award EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

107. The applicant also claimed:

(i) EUR 50 for postal services and photocopying;

(ii) EUR 550 for legal expenses incurred before the domestic authorities and the Court for his representation by Mr Kosolapov;

(iii) EUR 3,050 for legal expenses incurred before the Court for his representation by Mr E. Markov, who has represented him before the Court since May 2013. The applicant asked for the latter sum to be paid directly into Mr Markov's bank account.

108. The Government considered the claims to be excessive.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the volume of the submissions by the applicant's representative, the advanced stage of the Court proceedings at which he joined them, and bearing in mind that the applicant was granted EUR 850 in legal aid for his representation before the Court, it considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicant. Of the award made, the sum of EUR 500 is to

be paid into the applicant's bank account and EUR 1,000 into the bank account of Mr E. Markov.

C. Default interest

110. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection as to the alleged non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 3 of the Convention about the quality of the medical care afforded to him in detention to the merits of his complaint under Article 13 of the Convention and *rejects* it;

2. *Declares* the complaints concerning the conditions of detention in the prison hospital, the inadequacy of the medical treatment and lack of effective remedies to complaint about these grievances admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the prison hospital;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy to complain about the conditions of detention;

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of effective domestic remedy to complain about the lack of adequate medical assistance in detention;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of adequate medical assistance in detention;

7. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the

national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be paid to the applicant;

(ii) EUR 1,500 (one thousand and five hundred euros), in respect of costs and expenses incurred before the domestic authorities and the Court, plus any tax that may be chargeable to the applicant on that amount, of which EUR 500 (five hundred euros) to be paid to the applicant and EUR 1,000 (one thousand euros) to be paid directly to Mr E. Markov's bank account;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President